

MEMORANDUM FOR: Legislative Counsel

SUBJECT : Proposed "Back Pay Act of 1961"

1. As you requested, we have reviewed the proposed "Back Pay Act of 1961" concerning the restoration of pay and other employment benefits (leave, step increases, insurance, retirement, etc.) lost by an employee by reason of an unjustified or unwarranted personnel action. This bill would supersede the several existing authorities in this field and provide for situations not now covered. The principal points in justification of this proposal are as follows:

a. Comprehensive Nature: Whatever the circumstances of the action, this bill assures back pay protection whenever an unjustified or unwarranted personnel action which diminishes the pay of an employee is corrected. The employee must, however, appeal the action in a timely manner.

b. Test of Diminished Income: The proposal does not cover failure to realize some anticipated advantage. The action being corrected must have taken away some part of the employee's normal salary, wages, or other compensation. If an actual loss has not occurred, there is no entitlement to back pay. Further, in computing back pay, other salary earned during the period involved is offset against the back pay otherwise due.

c. Agency Initiative: By permitting an agency to authorize back pay on its own determination, this proposal introduces flexibility strengthening the corrective powers of management. For example, when an agency discovers that it has inadvertently taken an erroneous action and concludes that the matter should be settled in the employee's favor, the agency is free to take immediate corrective action and avoid the loss of time and resources involved in an appeal. Also, if one of a group of employees similarly affected by an erroneous action should win an appeal, the agency would be free to take uniform corrective action for the entire group on its own initiative.

d. Effective Date: The provisions of this bill would apply only to personnel actions taken on or after the date of its enactment. Claims based on prior actions would be subject to the applicable rule now in effect.

2. We are attaching comments of the Special Assistant to the Director of Personnel. As he remarks, we believe that enactment of this bill would be advantageous to the Agency. It provides clear authority for restoring lost pay and other benefits in the event an Agency employee should be adversely affected by a personnel action subsequently determined to be unjustified or unwarranted. Further, we believe that the bill accomplishes a desirable purpose in providing for comprehensive and uniform application of a principle already established as public policy, that is, that an employee is entitled to be made whole whenever an erroneous personnel action which has terminated or reduced his compensation is corrected by appropriate authority.

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Acting Director of Personnel

Attachments: A/S